Supreme Court of the United States

No. 226.

BENJAMIN STARK,

APPELLANT,

vs.

LEWIS M. STARR.

Appeal from the Circuit Court of the United States for the District of Oregon.

APPELLANT'S BRIEF.

J. S. BLACK,
Counsel.

McLAUGHLIN BROTHERS PRS.

STARK,
vs.
STARR.
No. 226.

This suit is between the same parties as No. 225. In all respects it is precisely the same as No. 225, except that it is for another lot in the same block. It was submitted on the same evidence, and the decree was made upon the same reasons, as in case No. 225. Judge Sawyer filing the same opinion *totidem verbis*, and Judge Deady dissenting on the same points, as in the other case.

Instead of repeating our brief in No. 225, we simply refer to it, and ask for the reversal of the decree in this case for the errors assigned in that.

The court will notice an *addendum* to his opinion in case No. 225 by Judge Sawyer, in which he makes an effort, which we think ineffectual, to differ this case from that. We append the additional note of the judge.

SAWYER, Circuit Judge:

"This action embraces lot three, in block eighty-one, and is in all respects similar, and as to the litigated points was submitted on the same evidence as the case of Starr *vs.* Stark, No. 62, just decided, except that the lot in this case was not embraced in the former action, the decree in which was claimed to be a bar in the other

case. The proceedings in the former action, however, are set up and claimed to be a bar in this case, on the ground that the same questions might have been directly litigated in that action between the same parties, and that the decree is as conclusive in this case as in the other. There can be no doubt, I think, that the
287 decree upon the title actually litigated and determined in that case—the title derived through the patent to the city—is conclusive in this action. But there can certainly be no ground for holding it conclusive upon those matters not in issue, and not litigated or determined, whatever may be the effect of that decree upon the title to the lots actually involved in the decision. The land in question here is a different subject-matter, and the parties are, certainly, not bound to litigate all their claims to this lot in an action about another lot, although the various chains of title to that other are the same. If the parties do, in fact, put the entire title in issue, and it is determined, the determination will be conclusive. But I know of no authority which goes so far as to sustain the position taken by defendant's counsel in this case.

"The other questions are precisely the same as those discussed in Starr *vs.* Stark, No. 62, and upon the authority of that case there must be a decree for the complainant in pursuance of the prayer of the bill, with costs, and it is so ordered."

Deady, District Judge, dissented on the second point indicated in his dissent in Starr *vs.* Stark, No. 62.

J. S. Black
for Counsel